IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

Madho Ram Meena and ors.
Versus
Ramphool Meena

S.B. CIVIL WRIT PETITION NO.2331/2007

Date of Order : 23 July, 2007.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Ashok Bhargava for the petitioners.

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The petitioners have challenged the order dated 29/5/2006 (Ann.5) passed by the learned Additional Civil Judge (Junior Division)-cum-Judicial Magistrate No.1, Jaipur City, Jaipur whereby their application for appointing Commissioner was rejected, the order dated 31/5/2006 (Ann.6) whereby the said court rejected

the application filed by the petitioners (defendants) for temporary injunction and the order dated 15/2/2007 (Aannexure-7) whereby the learned Additional District Judge No.1, Jaipur City, Jaipur rejected the appeal filed by the petitioners-defendants against the order of the trial court dated 31/5/2006.

I have heard Shri Ashok Bhargava, learned counsel for the petitioners and perused the writ petition and the documents placed on record.

Learned counsel for the petitioners argued that the learned first appellate court erred in appreciating that a prima-facie case on the material available on record was not made out in favour of the petitioners-defendants (appellants therein) inasmuch as, the plaintiffs themselves had accepted that the petitioners-defendants used to keep their cattles on the disputed land and also allowed the cattles to enter therein. It is submitted that the

defendants had purchased the disputed plot against the sale consideraton of Rs.2.5 lacs but the learned trial court erred in law in recording a finding vide order dated 31/5/2006 thereby rejecting the injunction application filed by the petitioners-defendants. The learned first appellate court has also not correctly appreciated this aspect of the matter and, therefore, repeated the same mistake.

Learned counsel for the petitioners has placed reliance on the judgments of the Hon'ble Supreme Court in **Rajnibai (Smt.) alias Mannubai Vs. Kamla Devi (Smt.) and others : (1996) 2 SCC 225** and has on the strength of that judgment argued that the injunction has to be granted on the basis of proof of pre-requisite condition therefor. To the same effect are the judgments of this Court cited by the learned counsel for the petitioners in **Smt.Chandra Kumari Vs. The State of Rajasthan & Ors. : 2000(2)**

W.L.C. 279, 2001(5) WLC 558 and 2002(4) WLC 305.

Having carefully scanned the material on record and gone through the judgments relied on by the learned counsel for the petitioners, I find that the trial court in the present matter has analysised the entire material in the correct perspective. While defendant-petitioners were claiming that they had purchased the plot in question for sale consideration of Rs.2.5 lacs but they failed to produce either any agreement to sell or any receipt for payment of such sale consideration. On the other hand, the plaintiff-respondents also claimed that they purchased the said plot from its original owner for the sale consideration of Rs.4 lacs in order to substantiate their ownership. The trial court therefore held that the defendants have failed to prove as to on what basis they were claiming possession over the land in dispute.

I am not inclined to accept the contention of the learned counsel for the petitioners in regard to the admitted possession of the defendants. What is stated is that defendants put their cattles on that plots. Except that, they could not prove as to what was the basis of their claiming title over the land. They also failed to produce any water & electricity bills so as to prove their legal possession over the disputed plot. Learned trial court on these facts held that there is no prima-facie case in favour of the petitioners. The learned District and Sessions Judge also upheld those findings and in my view rightly.

So far as the judgment of the Hon'ble Supreme Court in Rajnibai (Smt.) alias Mannubai supra is concerned, it has arisen from a civil suit filed for declaration of title simplicitor in which their lordships held that in such type of situation, the court has power under Order 39 Rules 1 and 2 CPC or even in

Section 151 C.P.C. to grant interim-injunction pending suit but the present one was a case where the petitioners were defendants in the suit for injunction. Similar view has been taken in Smt.Chandra Kumari supra wherein the plaintiff on the basis of the title over the land in dispute was claiming temporary injunction though the possession was admittedly with the defendants. The case of S.K. Vaidh supra was a case for specific performance of agreement which was filed by the plaintiff and possession of the defendant was admitted on the date of filing of such suit. It was held that temporary injunction in favour of plaintiff when the title had yet not crystalized in his favour could not be granted.

All these cases relied on by the learned counsel for the petitioners therefore turned on their own facts and do not help the petitioners in any manner whatsoever.

In view of what has been discussed above, I do not find any merit in the writ petition. The same is therefore dismissed in limine.

(MOHAMMAD RAFIQ), J.

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